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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,419	12/07/2001	Oswin Ottinger	SGL 00/9	2778
7590	06/08/2005		EXAMINER	
LERNER AND GREENBERG, P.A. POST OFFICE BOX 2480 HOLLYWOOD, FL 33022-2480			FEELY, MICHAEL J	
			ART UNIT	PAPER NUMBER
			1712	

DATE MAILED: 06/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/006,419	OTTINGER ET AL.
	<b>Examiner</b> Michael J. Feely	<b>Art Unit</b> 1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16, 18-30 and 36-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-16, 18-30 and 36-65 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Pending Claims***

Claims 1-16, 18-30, and 36-65 are pending.

### ***Response to Amendment***

1. After further consideration of the pending claims, the finality of the rejection of the last Office action has been withdrawn.

### ***Previously Indicated Allowable Subject Matter***

2. The indicated allowability of claims 1-16, 18-30, and 36-61 is withdrawn in view of the newly discovered supporting reference(s) to Mercuri (US Pat. No. 6,517,964). Rejections based on the newly cited reference(s) follow.

### ***Previous Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. The rejection of claims 31-33 and 35 under 35 U.S.C. 102(e) as being anticipated by Woods (US Pat. No. 6,656,580) and Technical Data Sheets for Resinol 90C and Resinol RTC, provided by Loctite, has been rendered moot by the cancellation of claims 31-35.

### ***Previous Claim Rejections - 35 USC § 102/103***

5. The rejection of claim 34 under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Woods (US Pat. No. 6,656,580) and Technical Data Sheets for Resinol 90C and Resinol RTC, provided by Loctite, has been rendered moot by the cancellation of claims 31-35.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-16, 18-30, and 36-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woods (US Pat. No. 6,656,580 or WO 01/43964), Technical Data Sheets for Resinol 90C and Resinol RTC, (*provided by Loctite*), and Mercuri (US Pat. No. 6,517,964).

In the following rejection, the technical data sheets have been used to show inherent characteristics of the acrylic resin used in Woods. In addition, since the Woods references are equivalents, all citations are directed towards the US patent.

Regarding claims 1-6, 10, 13, 36-40, 46-48, and 62-65, Woods (*with support of the Technical Data Sheets*) discloses, (**1 & 10**) a synthetic resin-impregnated body (column 4, lines 40-47) comprising a primary product formed of expanded or at least partially recompressed expanded graphite having a liquid-accessible pore system (column 4, line 50 through column 5, line 5), wherein said primary product is impregnated (column 5, lines 20-35) with at least one of: at least one solvent-free polymerizable acrylic resin system; and polymers obtained by curing said at least one resin system (column 5, lines 5-10; Technical Data Sheets for Resinol 90C and Resinol RTC); (**2 & 36**) wherein said at least one acrylic resin system contains triethyleneglycol dimethacrylate (column 9, lines 45-56) and at least one initiator system (column 10, lines 13-27); (**3 & 37**) wherein said at least one acrylic resin system contains azo initiators as said at least one initiator (column 10, lines 49-67); (**4 & 38**) wherein said azo initiators contained in at least one

acrylic resins systems are selected from the group consisting of 2,2'-dimethyl-2,2'-asodipropiononitrile, 1,1'-azobis(1-cyclohexanecarbonitrile) and azoisobutyric acid nitrile (column 10, lines 49-67); (**5 & 39**) wherein said at least one acrylic resin system has a storage stability at room temperature of more than two days (column 5, lines 5-10; Technical Data Sheets for Resinol 90C); (**6 & 40**) herein said at least one acrylic resin system has a storage stability at room temperature of more than two weeks (column 5, lines 5-10; Technical Data Sheets for Resinol 90C); (**13 & 46**) wherein a continuous resin surface film is not present and the body is electrically conductive (column 6, lines 50-59; column 4, lines 11-16); (**47 & 48**) a heat conducting element comprising the resin impregnated body of claim 1 or 10 (column 7, lines 14-32; column 8, lines 22-50); (**62 & 63**) a sealing element comprising the resin impregnated body of claim 1 or 10 (column 7, lines 14-32; column 8, lines 22-50); and (**64 & 65**) a fuel cell component comprising the resin impregnated body of claim 1 or 10 (column 7, lines 14-32; column 8, lines 22-50).

Regarding claims 14-16, 18, 22-24, 30, 49, 50, and 54-56, Woods (*with support of the Technical Data Sheet s*) discloses (**14, 18 & 30**) a process for producing a resin-impregnated body (column 5, lines 20-36), which comprises: providing a primary product formed of expanded or at least partially recompressed expanded graphite having a liquid-accessible pore system (column 4, line 50 through column 5, line 5); impregnating the primary product with at least one solvent-free polymerizable acrylic resin system to form a resin-containing, uncured intermediate product (column 5, lines 5-10; Technical Data Sheets for Resinol 90C and Resinol RTC); and finally subjecting the intermediate product to a curing treatment (column 10, lines 36-49); (**15 & 49**) which further comprises processing the resin-containing, uncured intermediate

product to form a shaped body (column 5, lines 30-36); and carrying out the subjecting step by subjecting the uncured shaped body produced from the uncured intermediate product to a curing treatment for the at least one resin system (column 10, lines 36-49); **(16 & 50)** which further comprises simultaneously shaping the acrylic resin-containing body (column 5, lines 30-55) and curing the resin system that is present as a result of temperature impact (column 10, lines 36-49); **(22 & 54)** wherein the acrylic resin has a viscosity at room temperature of less than 100 mPa\*s (column 5, lines 5-10; Technical Data Sheets for Resinol 90C); **(23 & 55)** wherein the acrylic resin has a viscosity at room temperature of less than 50 mPa\*s (column 5, lines 5-10; Technical Data Sheets for Resinol 90C); and **(24 & 56)** wherein the acrylic resin has a viscosity at room temperature of less than 20 mPa\*s (column 5, lines 5-10; Technical Data Sheets for Resinol 90C).

Woods uses his impregnated flexible graphite sheet (*from compressed, exfoliated graphite particles*) to form sealed fluid-flow field plates in a fuel cell (*see 222A and 222C of Figure 3*). These impregnated flexible graphite plates are very similar to impregnated bodies of the instant invention; however, Woods is deficient because he fails to disclose the following limitations: **(1 & 14)** wherein the primary product has an ash value limited to not more than four percent of the primary product; **(18)** wherein the primary product has an ash value limited to not more than two percent of the primary product; and **(10 & 30)** wherein the primary product contains fillers selected from the group consisting of ceramic fillers, mineral fillers, electrically non-conductive fillers, and electrically conductive fillers.

Mercuri also discloses flexible graphite sheets used in the formation of fuel cells. Mercuri focuses on electrodes (*see 110 of Figures 2, 3, and 3A*), as opposed to the fluid-flow

field plates (*see 1000 and 1100 of Figures 2, 3, and 3A*), wherein, "The flexible graphite can also, at times, be advantageously treated with resin and the absorbed resin, after curing, enhances the moisture resistance and handling strength, i.e. stiffness, of the flexible graphite sheet. Suitable resin content is preferably about 20 to 30% by weight, suitably up to about 60% by weight," (*see column 7, lines 27-32*).

With respect to the ash value limitation, Mercuri discloses that ash value is an indicator of graphite purity, wherein, "Generally, any carbon-containing material, the crystal structure of which possesses the required degree of graphitization and which can be chemically treated and exfoliated, is suitable for use with the present invention. Such graphite preferably has an ash content of less than six weight percent. More preferably, the graphite employed for the present invention will have a purity of at least about 99%. In the most preferred embodiment, the graphite employed will have a purity of at least about 99.9%," (*see column 4, lines 51-59*). This ash content appears to be suitable for fuel cell construction in general, including the fluid-flow field plates taught by Woods.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to limit the ash value of flexible graphite sheets to values of less than four percent and less than two percent, as taught by Mercuri, in the fluid-flow field plates of Woods because Mercuri discloses the use of flexible graphite sheets in fuel cell construction, wherein the ash content is preferably less than one percent to maintain an acceptable level of graphite purity.

With respect to the incorporation of fillers, Mercuri discloses, "Flexible graphite sheet material is coherent, with good handling strength, and is suitably compressed, e.g. by roll-pressing, to a thickness of about 0.075 mm to 3.75 mm and a typical density of about 0.08 to 2.0

grams per cubic centimeter (g/cc). From about 1.5-30% by weight of ceramic additives can be blended with the intercalated graphite flakes as described in US Pat. No. 5,902,762 (which is incorporated here to provide enhanced resin impregnation in the final flexible graphite product)," (*see column 7, lines 7-15*). The incorporation of these ceramic fillers appears to be suitable for fuel cell construction in general, including the fluid-flow field plates taught by Woods.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate ceramic fillers in flexible graphite sheets, as taught by Mercuri, in the fluid-flow filed plates of Woods because Mercuri discloses the use of flexible graphite sheets in fuel cell construction, wherein the ceramic fillers are blended with the intercalated graphite flakes to provide enhanced resin impregnation in the final flexible graphite product.

\* *In the above rejections, the impregnated carbon body would have been inherently thermally and electrically conductive due to the inherent conductive nature of the graphite material. In addition, the acrylic resins would have been inherently "solvent-free" because the Technical Data Sheets provide no detail regarding a solvent presence or content.*

*Regarding claims 7-9, 25-27, 41-43, and 57-59, Woods is silent regarding providing specific "take-up" values of (7, 25, 41 & 57) up to 100% (up to 50 wt% acrylic), (8, 26, 42 & 58) 5-35% (5 to 25 wt% acrylic), and (9, 27, 43 & 59) 10-25% (10 to 20 wt% acrylic). However, he discloses, "the amount of sealant up-take can be controlled over a wide range by varying the impregnation pressure, temperature, sealant viscosity, impregnation time or density of the sheet," (column 6, lines 33-36). Applicant fails to show criticality for this range, and this range is a result effective because it has a direct impact on the process-ability and shaping capability of the*

impregnated sheet. In light of Woods' teaching, it would have been obvious to one skilled in the art to tailor the "up-take" value by choosing the appropriate processing and material parameters.

Furthermore, it has been found that, "where general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation," —*In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Therefore it would have been obvious to provide the specific "take-up" values of up to 100% (up to 50 wt% acrylic), 5-35% (5 to 25 wt% acrylic), and 10-25% (10 to 20 wt% acrylic) in the impregnated body of Woods because Woods discloses that the "take up" can be tailored by numerous process and material parameters, resulting in desirable process-ability and shaping capability of the impregnated body.

*Regarding claims 28, 29, 60, and 61*, Woods fails to explicitly disclose the curing conditions set forth in claims (**28, 29, 60 & 61**). However, Applicant fails to show criticality for these curing conditions, and these conditions are result effective variables, necessary to achieve a successful curing reaction.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the curing conditions of less than 10 minutes or less than 3 minutes at a temperature of up to 200°C in order to achieve a successful curing reaction of the impregnated resin.

*Regarding claims 19-21 and 51-53*, Woods does not explicitly disclose the process of claim 14 or 30, wherein (**19 & 51**) the primary product *maintains* a bulk density in a range of

from 0.1 to 1.8 g/cm<sup>3</sup> (*see column 4, lines 57-61; column 5, lines 36-44*); wherein (20 & 52) the primary product *maintains* a bulk density in a range of from 0.3 to 1.5 g/cm<sup>3</sup> (*see column 4, lines 57-61; column 5, lines 36-44*); and wherein (21 & 53) the primary product *maintains* a bulk density in a range of from 0.5 to 1.3 g/cm<sup>3</sup> (*see column 4, lines 57-61; column 5, lines 36-44*).

Rather, Woods discloses, “For example, a graphite sheet with a graphite density of about 0.08 to about 0.5 g/cc may be mechanically deformed resulting in a compressed sheet or plate with a graphite density greater than 1.0 g/cc,” (column 5, lines 36-44). Woods does not provide any examples satisfying this limitation; however, the claimed ranges overlap the open-ended range set forth in Woods. In light of this, it has been found that in the case where claimed ranges “overlap or lie inside ranges disclosed by the prior art” a *prima facie* case of obviousness exists – *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976).

Therefore, the maintained density ranges of claims 19-21 would have been obvious because the initial range of Woods, 0.08 to about 0.5 g/cc, falls within the claimed range, and the final range of Woods, greater than 1.0 g/cc, overlaps the claimed range.

*Regarding claims 11 and 44*, Woods discloses the synthetic resin-impregnated body according to claim 1 or 10, wherein (11 & 44) it includes at least two independently held together networks, one of said networks being formed of a connected framework made of expanded or expanded and thereafter at least partially recompressed graphite with electrical and thermal conductivity, and the other of said networks being a connected network made of synthetic material having penetrated into said pore system (column 4, line 50 through column 5,

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line 5; column 5, liens 20-35); however, he does not explicitly disclose an electrical volume resistance from 0.10 to 0.77 mΩ.

Due to the conductive nature of the graphite materials, it appears that this volume resistance would have been an inherent property of Woods' invention. The resin-impregnated body of Woods contains the same materials as the instant invention. In light of this, it has been found that, "Products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present – *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Therefore the product of Woods would have inherently had a volume resistance of from 0.10 to 0.77 mΩ because the materials used are the same as those used in the instant invention.

*Regarding claims 12 and 45*, Woods discloses the synthetic resin-impregnated body according claim 1 or 10, (**12 & 45**) including a surface, regions close to said surface, and a remaining part (column 6, lines 12-22 and 50-59); however, he does not explicitly disclose that the resin system is disposed only in one of said remaining part and said regions.

The impregnation method of the instant invention is indistinguishable from the impregnation method used by Woods. In addition, Wood provides an optional step of removing excess resin (column 6, lines 50-59), which would have inherently removed resin from the surface and those areas *close to the surface*.

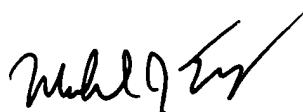
Therefore, the limitation of claims 12 and 45 would have been inherently satisfied by Woods because his impregnation step is accompanied by the removal of excess liquid, which inherently removes resin from the surface and those areas close to the surface.

***Communication***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Feely whose telephone number is 571-272-1086. The examiner can normally be reached on M-F 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on 571-272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael J. Feely  
Primary Examiner  
Art Unit 1712